

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID S QUAIR,
Plaintiff,
v.
GAVIN NEWSOM, et al.,
Defendants.

Case No. [19-cv-08421-JD](#)**ORDER OF DISMISSAL**

Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and plaintiff has filed an amended complaint.

DISCUSSION**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its

1 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”
2 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they
3 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
4 should assume their veracity and then determine whether they plausibly give rise to an entitlement
5 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by
7 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was
8 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

9 **LEGAL CLAIMS**

10 In the original complaint, plaintiff sought to make out a variety of claims concerning the
11 conditions of his incarceration. The Court noted that all of plaintiff’s claims lacked any factual
12 allegations to support them, and so were not plausible claims. Plaintiff was provided an
13 opportunity to amend to state with facts how specific defendants violated his constitutional rights.

14 The amended complaint did not do that. Plaintiff again alleges in a conclusory fashion that
15 his conviction and conditions of confinement have resulted in the disregard for his life, liberty,
16 health and safety. Plaintiff provides no facts or details, and fails to identify the actions of any
17 specific defendant.

18 These barebones allegations are not enough to proceed with this case. Because plaintiff
19 has already been provided leave to amend and failed to address the shortcomings spelled out by
20 the Court, further leave to amend is not warranted. The complaint is **DISMISSED** with prejudice
21 for failure to state a claim.

22 **IT IS SO ORDERED.**

23 Dated: March 9, 2020

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JAMES DONATO
United States District Judge

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 9, 2020, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David S Quair ID: BG0478
North Kern State Prison
Facility D
P.O. Box 5005
Delano, CA 93216-0567

Dated: March 9, 2020

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO